

23-cv-02171

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re Voyager Digital Holdings, Inc., et al., Debtors

UNITED STATES OF AMERICA, ET AL., Appellants,

v.

VOYAGER DIGITAL HOLDINGS, INC., ET AL., Appellees.

ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**EX PARTE MOTION FOR AN ORDER SHORTENING NOTICE AND SCHEDULING
HEARING WITH RESPECT TO THE APPELLANTS' EMERGENCY MOTION FOR A
STAY PENDING APPEAL PURSUANT TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 8007**

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The United States of America, by its attorney, Damian Williams, the United States Attorney for the Southern District of New York (the “United States Attorney”) and Justice Department official William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”) (together, the “Government”), respectfully submit this motion (“Motion to Shorten”) for entry of an order shortening the notice period with respect to the *Emergency Motion for a Stay Pending Appeal* (“Motion for Stay”), filed contemporaneously. In support thereof, the Government respectfully states:

Relief Requested

By this Motion to Shorten, the Government seeks entry of an order shortening the notice period with respect to the Motion for Stay, establishing an expedited deadline for objecting to the Motion for Stay, and scheduling a hearing on Motion for Stay on an expedited basis.

The stipulated stay (the “Stay Deadline”) will expire on Monday, March 20, 2023, at 5:00 p.m. *See Order Extending the Stay of the Confirmation Order* [S.D.N.Y. Bankr. Case No. 22-10943 (MEW) at Dkt. No. 1188¹]. The Motion for Stay should be heard before the expiration of the Stay Deadline.

Basis for Relief Requested

Fed. R. Bankr. P. 9007 authorizes the Court to regulate the time within which, the entities to whom, and the form and matter in which notice is provided. Fed. R. Bankr. P. 9006(c) provides that the Court, for cause shown, may (with or without motion or notice) reduce any such notice period. The Court, thus, has the authority to determine the appropriate notice for conducting a hearing on the matters presented by the Motion for Stay.

¹“Dkt.” refers to the docket numbers in bankruptcy court, Case No. 22-10943.

Cause Exists to Shorten Notice with Respect to the Motion for Stay

The Government is filing the Motion for Stay contemporaneously herewith. It seeks to prevent the order confirming the chapter 11 plan (the “Plan”) of Voyager Digital Holdings, Inc. and its affiliated Debtors (the “Debtors”) from exculpating Debtors non-debtors, including some not yet even in existence, from the police and regulatory authority of the United States and other governmental authorities, including for acts that have not yet occurred, while this appeal proceeds.

At the confirmation hearing in connection with the Plan, the Government objected to the proposed waiver of the prescribed 14-day stay of confirmation order, pursuant to Fed. R. Bankr. P. 3020(e), found in paragraph 118 of the Proposed Order. March 7, 2023 Transcript at 34:9-16 (“the “U.S. Trustee would oppose the waiver of the stay.”); *see also* at 108:11-15, 109:14-21, 117:16-118:2. The bankruptcy court declined to impose the 14-day stay, and instead, limited the stay to six days, *i.e.*, through the Monday following the Confirmation hearing. *Id.* at 108:16-21.

Following the confirmation hearing, the Government met with counsel for the Debtors, whereby the parties agreed to an extension of the stay through Wednesday, March 15, 2023. This extension was approved by order of the bankruptcy court on March 11, 2023. *See* Order Extending the Stay of the Confirmation Order. [Dkt. No. 1169].

On March 14, 2023, in the bankruptcy case, the Government filed its Motion for a Stay Pending Appeal (the “Bankruptcy Stay Motion”). [Dkt. No. 1182]. On March 15, 2023, the Debtors [Dkt. No. 1186] and the Official Committee of Unsecured Creditors (the “Committee”) [Dkt. No. 1187] each filed their opposition to the Bankruptcy Stay Motion.

The bankruptcy court held a hearing on the Bankruptcy Stay Motion on March 15, 2023.² Upon agreement between and among the Government, the Debtors and the Committee, the bankruptcy court further extended the stay through 5:00 p.m. on March 20, 2023.

Accordingly, the Government respectfully asks the Court to schedule a hearing on the Motion for Stay prior to 5:00 p.m. on March 20, 2023, when the Stay Deadline currently expires.

The Motion for Stay seeks (1) a stay of the Confirmation Order pending appeal and (2) an immediate stay pending decision on the Motion for Stay. In the alternative, if this Court grants no other relief, the Government requests a minimum of a two-week stay to allow time for the Second Circuit to consider a motion for stay.

In seeking a stay pending appeal, the Government's objective is to preserve the status quo during the life of the appeal. *See In re Chateaugay Corp.*, 988 F.2d 322, 326 (2d Cir.1993). To date, the Debtors and the Committee have failed to identify a concrete date when the Plan will become effective that might obviate the need for a stay, stating only that they would seek to consummate the Plan "expeditiously" or "as quickly as possible."³

Further, if this Court were to deny the Motion for Stay, the Government may seek relief from the U.S. Court of Appeals for the Second Circuit. Fed. R. Bankr. P. 8007(b). In that event, the Court of Appeals would benefit from the additional time provided by granting this Motion to familiarize itself with the extensive record necessary to consider and resolve a motion for stay before the Plan's Effective Date.

The Government seeks an expedited hearing to foster its appellate rights and to maintain the status quo beyond the expiration of Stay Deadline.

² Later that day the Court issued a Decision and Order Denying the Government's Motion for Stay of the Confirmation Order Pending Appeal. [Dkt. No. 1190].

³ *See* Hearing Transcript, March 7, 2023, at 34-35, Ex. D.

CONCLUSION

WHEREFORE, for these reasons, the Government respectfully requests the Court enter an order scheduling an expedited hearing on the Motion for Stay and granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: March 17, 2023
New York, New York

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